Copper Mining & Smelting Co. v. *Bigelow,* 203 Mass. 159, 211, 89 N. E. 193, 40 L. R. A. (N. S.) 314. For authorities sustaining the distinction see *Brennan* v. *Standard Oil Co.,* 187 Mass. 376, 73 N. E. 472; *Corbett* v. *Boston & Maine Railroad,* 107 N. E. 60. The same distinction is made under the federal Employers' Liability Act (Act Apr. 22, 1908, § 149, 35 St. 65—U. S. Comp. Stat. 1913, §§ 8657-8665) in holding that there is not identity of parties for the purposes of the law of res adjudicata between the administrator of the estate of a deceased employee and his widow and children as the sole beneficiaries under that law. *Troxell* v. *Delaware, Lackawanna & West. R. R.,* 227 U. S. 434, 442, 33 Sup. Ct. 274, 57 L. Ed. 586. See also *Amer. R. R.* v. *Birch,* 224 U. S. 547, 32 Sup. Ct. 603, 56 L. Ed. 879; *Winfree* v. *Northern Pacific Ry.,* 227 U. S. 296, 33 Sup. Ct. 273, 57 L. Ed. 518. A person in one capacity is not bound by a previous judgment or admission in another capacity. *Leggott* v. *Great Northern Ry.,* 1 Q. B. D. 599; *Daly* v. *Dublin, Wicklow & Wexford Ry.,* 30 L. R. Ireland 514; *Frost* v. *Thompson,* 106 N. E. 1009. See also *Bradshaw* v. *Lancashire & Yorkshire Ry.,* L. R. 10 C. P. 189; *Duchess of Kingston's Case,* 2 Smith's Lead. Cas. (9th ed.) 844. The court held also that there is no estoppel by privity between the administrator in the one capacity and in the other, because here there is no known or recognized privity either in estate, in blood, in representation, in law, or "in mutual or successive relationships to the same rights of property." *Old Dominion Copper Mining & Smelting Company* v. *Bigelow,* 203 Mass. 159, 218, 89 N. E. 193, 40 L. R. A. (N. S.) 314. "Merely because persons in two different capacities are interested in proving or disproving the same facts does not necessarily make them privies." *Duffee* v. *Boston Elev. Ry.,* 191 Mass. 563, 564. The reasoning above to establish that there are two distinct causes of action, that the parties in the two cases are different, and that there is no privity between the administrator in the one capacity and in the other is the reasoning of the court in the principal case, and seems to be sound.

MARRIAGE—FRAUD AS GROUND FOR ANNULMENT.—Prior to his marriage to the plaintiff, defendant was treated for tuberculosis. He falsely represented to the plaintiff that certain symptoms which he displayed were manifestations of a cold. A few days after marriage, a physician diagnosed his case as tuberculosis. Plaintiff ceased to cohabit with him and now seeks annulment of the marriage on the ground of fraud. *Held,* that the fraud went to the essence of the contract of marriage, and annullment should be decreed. *Sobol* v. *Sobol,* (N. Y. 1914), 150 N. Y. S. 248.

A greater measure of fraud is required to justify annulling marriage than would be necessary to avoid an ordinary contract, because the marriage relation is a status controlled and regulated by considerations of public policy, which are paramount to the rights of the parties. *Wier* v. *Still,* 31 Ia. 107; *Smith* v. *Smith,* 171 Mass. 404. Fraudulent misrepresentation of one party as to birth, social position, fortune and good health cannot vitiate the contract. *Reynolds* v. *Reynolds,* 3 Allen 605; 1 BISHOP, MAR. & DIV., (5th ed.) § 167. Concealment of the fact that the woman had prior to the marriage

been insane, (*Cummington* v. *Belchertown,* 149 Mass. 223) unchaste, (*Leavitt* v. *Leavitt,* 13 Mich. 452), given birth to an illegitimate child, (*Farr* v. *Farr,* 2 MacArth. 35), have all been held insufficient to justify annulment of marriage; so also has fraudulent representation of freedom from epilepsy, *Lyon* v. *Lyon,* 230 Ill. 366. Fraud to be ground for annulment of marriage must be of such a nature as to render impossible the performance of the duties of the marriage relation or render its continuance dangerous to health and life. *Smith* v. *Smith,* 171 Mass 404. Thus impotency at the time of marriage, (*Bascomb* v. *Bascomb,* 25 N. H. 267), incapacity for sexual intercourse, (*Mutter* v. *Mutter,* 30 Ky. L. Rep. 76), presence of venereal disease, (*Swenson* v. *Swenson,* 178 N. Y. 54), pregnancy by another man, (*Harrison* v. *Harrison,* 94 Mich. 559), have been held grounds for annulment. The court considered fraudulent concealment of consumption as somewhat analogous to fraudulent concealment of a venereal disease, though it also recognized that consumption does not affect the marriage relation so closely. "If however, it is such a disease that, through the close tie of the marital relation, grave results from infection may be caused to the other party, and possibly evil consequences to the offspring, I think it of sufficient grave character to bring it within the purview of the rule applicable to veneral diseases." Whether consumption can be brought within "purview of the rule applicable to venereal diseases" would seem to be open to some doubt. It does not involve shame in its presence, nor necessarily contagion in marital association. The case is in accord with the policy of the New York courts, which are given to great liberality in discovering such fraud as will justify them in annulling a marriage. *Di Lorenzo* v. *Di Lorenzo,* 174 N. Y. 467, *Domschke* v. *Domschke,* 138 App. Div. 454.

PARDON—NECESSITY OF ACCEPTANCE.—A person claiming the privilege from self-incrimination is not in contempt of court nor liable for punishment for contempt because he refuses to testify before a Federal grand jury, even though he be presented with a pardon from the President of the United States absolving him from all punishment for every criminal act which his testimony might tend to show that he had committed. *Burdick* v. *United States,* (1915), 35 Sup. Ct. 267.

The rule adopted in the earliest decisions, which has been consistently followed, is that a pardon must be accepted before it has any binding force. 2 HAWKINS, Ch. 37, § 59; *Ex Parte Powell,* 73 Ala. 517, 49 Am. Rep. 71; *People* v. *Frost,* 117 N. Y. S. 524, 113 App. Div. 179; *Ex Parte Williams,* 149 N. C. 436, 63 S. E. 108; *Commonwealth* v. *Halloway,* 44 Pa. 201, 84 Am. Dec. 431; *United States* v. *Wilson,* 7 Pet. 150, 32 U. S. 150, 8 L. Ed. 640. A person may refuse to accept a pardon if he so desires. *United States* v. *Wilson,* supra; *Commonwealth* v. *Lockwood,* 109 Mass. 320. The necessity for acceptance is based on two grounds: *first,* that a pardon is a deed and like every other deed must be delivered, and since delivery is not possible without acceptance, acceptance is essential; *second,* that taking advantage of a pardon imputes a confession of a crime so that a pardon necessarily presupposes the commission of the offence and remits the punishment. Hence to make a